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No. 104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AM....ICA, *Petitioner*

v.

RICHARD ISAAC MENASCHE, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR THE RESPONDENT

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INDEX

Page

The Question Presented 1

Statement 1

Argument 2

I. Section 405(a) of the Immigration and Nationality Act of 1952 requires that the provisions of the Nationality Act of 1940 apply to the naturalization proceedings which were initiated by the filing of a declaration of intention prior to the effective date of the 1952 Act 2

A. The plain language of Section 405(a) requires that Respondent's naturalization proceeding be governed by the provisions of the 1940 Act because his filing of a declaration of intention prior to the effective date of the 1952 Act gave rise to a "right in process of acquisition," a "status" and a "condition"; and initiated a "thing," a "matter," and a "proceeding," all of which were in existence at the effective date of the 1952 Act .. 2

B. The history and background of Section 405(a) clearly supports the plain language of Section 405(a) that the 1940 Act governs naturalization proceedings where a declaration of intention was filed prior to the effective date of the 1952 Act 4

II. Section 405(b) does not preclude or prohibit the application of the provisions of the 1940 Act to naturalization proceedings initiated by a declaration of intention filed prior to the effective date of the 1952 Act 9

III. The construction of Sections 405(a) and 405(b) adopted by the courts below does not have the effect of negating or nullifying other provisions of the Act nor of perpetrating inequities 15

Conclusion 18

CITATIONS

Page

CASES:

Bertoldi v. McGrath, 178 F. 2d 977 (C.A. D.C.) ..3, 5, 6, 7
Ex parte Robles-Rubio, 119 F. Supp. 610, 613-14 (N.D. Cal.) 18
In re Joeson, 117 F. Supp. 528 (D. Haw.) 4, 14
In re Katsumi Yoshida, 113 F. Supp. 631 (D. Haw.) 3
In re McGinnis, 50 F. Supp. 303 (D. Mass.) 12, 13
In re Shaver, 140 F. 2d 180 (C.A. 7) 7, 13
In re Urmeneta, 42 F. Supp. 138 (E.D. Wisc.) 7, 13
Petition of Hirsch, 50 F. Supp. 638 (D. Pa.) 13
Petition of LaBella, 52 F. Supp. 980 (D. Conn.) 13
Petition of Menasche, 115 F. Supp. 434 (D.P.R.) aff'd sub. nom. United States v. Menasche, 210 F. 2d 809 (C.A. 4) 14
Petition of Otness, 49 F. Supp. 220 (N.D. Cal.) 7, 13
Petition of Pringle, 122 F. Supp. 90, (E.D. Va.) aff'd sub. nom. United States v. Pringle, 212 F. 2d 878 (C.A. 4) 4, 9, 10, 14
Petition of Sproule, 19 F. Supp. 995, 997 (S.D. Cal.) 3
Petition of Zigalnitsky, 72 F. Supp. 987, 988 (S.D. N.Y.) Reversed on other grounds, 164 F. 2d 549 (C.A. 2) 3, 7, 8, 13
Shomberg v. United States, No. 48, O.T. 1954, 115 F. Supp. 336, (S.D. N.Y.) 210 F. 2d 82 (C.A. 2) ..4, 15, 16
United States ex rel. Aberasturi v. Cain, 147 F. 2d 449 (C.A. 2) 5, 6, 7
United States v. Cunha, 209 F. 2d 326 (C.A. 1) 4

UNITED STATES STATUTES:

Immigration and Nationality Act of 1952, 66 Stat. 166 et seq., 8 U.S.C. § 1101, et seq.

§ 311, 66 Stat. 239, 8 U.S.C. § 1422 .....15, 16
§ 313(a), 66 Stat. 240, 8 U.S.C. § 1424(a) 15, 16
§ 315(a), 66 Stat. 242, 8 U.S.C. § 1426(a) 15, 16
§ 318, 66 Stat. 244, 8 U.S.C. § 1429 .....15, 16
§ 319, 66 Stat. 244, 8 U.S.C. § 1430 17
§ 327, 66 Stat. 248, 8 U.S.C. § 1438 11
§ 328(b)(2), 66 Stat. 249, 8 U.S.C. § 1439(b)(2) .. 11
§ 329(b)(5), 66 Stat. 250, 8 U.S.C. § 1440(b)(5) .. 11
§ 331(d), 66 Stat. 252, 8 U.S.C. § 1442(d) 15, 16
§ 336(e), 66 Stat. 257, 8 U.S.C. § 1447(e) 11

Page

§ 405(a), 66 Stat. 280, 8 U.S.C. § 1101, footnote 2 and throughout
§ 405(b), 66 Stat. 280, 8 U.S.C. § 1101, footnote 4 and throughout

Nationality Act of 1940:

§ 310(a), 54 Stat. 1144, 8 U.S.C. (1946 ed.) § 710(a) 17
§ 347(a), 54 Stat. 1168, 8 U.S.C. (1946 ed.) § 747 4 and throughout
§ 347(b), 54 Stat. 1168, 8 U.S.C. (1946 ed.) § 747 11 and throughout

Act of July 9, 1918, 40 Stat. 885, 8 U.S.C. § 366 7

MISCELLANEOUS:

Message of the President of the United States Transmitting a Report of the Joint Departmental Committee, House Committee on Immigration and Naturalization, 75th Congress, 3d Session ...7, 12

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RICHARD ISAAC MENASCHE, *Respondent*

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BRIEF FOR THE RESPONDENT

THE QUESTION PRESENTED

Where an alien has filed a declaration of intention prior to the effective date of the Immigration and Nationality Act of 1952, is the ensuing naturalization proceeding governed by the provisions of the 1952 Act, or by the Nationality Act of 1940, which was the law in effect at the time his declaration was filed?

STATEMENT

There is no dispute as to the facts.

ARGUMENT

I. SECTION 405(a) OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 REQUIRES THAT THE PROVISIONS OF THE NATIONALITY ACT OF 1940 APPLY TO THE NATURALIZATION PROCEEDINGS WHICH WERE INITIATED BY THE FILING OF A DECLARATION OF INTENTION PRIOR TO THE EFFECTIVE DATE OF THE 1952 ACT.

A. The Plain Language of Section 405(a) Requires That Respondent's Naturalization Proceeding be Governed by the Provisions of the 1940 Act Because His Filing of a Declaration of Intention Prior to the Effective Date of the 1952 Act Gave Rise to a "Right in Process of Acquisition," a "Status" and a "Condition"; and Initiated a "Thing," a "Matter," and a "Proceeding," All of Which Were in Existence at the Effective Date of the 1952 Act.

The language of Section 405(a) of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U.S.C.A. Sec. 1101, footnote, is plain and unambiguous. It provides, in the broadest, most all-inclusive, and sweeping language possible, that positions of benefit or disadvantage attained or acquired under the previously effective laws should not be affected or disturbed by applying the provisions of the Immigration and Nationality Act of 1952. It is difficult to conceive that Congress could have chosen language which could more comprehensively embody or more specifically convey its intention that the statutory *status quo* with respect to all matters which had been initiated prior to the effective date of the 1952 Act continue without regard to the provisions of the new law except as might be otherwise specifically excepted.

Section 405(a) expressly embraces situations in which a declaration of intention was filed prior to the effective date of the 1952 Act, for it specifically and explicitly preserves the validity of previously filed declarations of intention. Certainly there would be little point in preserving the "validity" of a declaration filed under a previous law, if the fact that the declaration was filed does not operate to preserve the applicability of the prior law to the naturalization proceedings instituted by the

declaration. *Cf. Zigalnitsky v. United States*, 164 F. 2d 549, 550 (C.A. 2).

Even if there were any question as to what was intended in preserving the validity of declarations of intention, Congress also expressly provided further on in Section 405(a) that prior law must remain in effect with regard to "all such prosecutions, suits, actions, proceedings, [statuses], conditions, rights, acts, things, liabilities, obligations, or matters" existing at the effective date of the 1952 Act. Although declarations of intention are not expressly included in this enumeration, there can be no doubt that Congress, in using such all-inclusive language, intended that the items enumerated embrace declarations. *Cf., Bertoldi v. McGrath*, 178 F. 2d 977, 979 (C.A.D.C.).

As the Government concedes (Brief for the United States, p. 18), there is little room for elaborate statutory construction where the words of the statute are plain. The language of Section 405(a) is crystal clear, and operates to assure:

> ". . . that if a person had actually started on his way to attaining any of the benefits or liabilities proper under the old act, his right or liability to continue was preserved by the savings clause." *In re Katsumi Yoshida*, 113 F. Supp. 631, 632 (D. Haw.).

By filing his declaration of intention, Respondent had taken the first statutory step toward acquisition of citizenship. He had started on his way to obtaining a benefit to which he was entitled under the 1940 Act. See *In re Katsumi Yoshida, supra.* He had taken "the first step in the process of naturalization." *Petition of Sproule*, 19 F. Supp. 995, 997 (S.D. Cal.). The filing of a declaration of intention gives rise to a "status" or "condition" for purposes of naturalization in that it puts the declarant in a position to file a naturalization petition in due course. It commences a "thing" or a "matter," and certainly a naturalization "proceeding." *Petition of Sproule, supra.* See also *Petition of Zigalnitsky*, 72

F. Supp. 987, 988 (S.D.N.Y.), reversed on other grounds, 164 F. 2d 549 (C.A. 2), in which the court clearly regarded the filing of a declaration of intention as instituting "naturalization proceedings."[1]

So forthright is the language and so obvious the intendment of Section 405(a), that there has been absolute unanimity among the Courts in holding that this section preserved prior law in the cases of aliens who have filed either a declaration of intention or an "Application for Certificate of Arrival and Preliminary Form for Petition of Naturalization" (Form N-400) prior to the effective date of the 1952 Act. These include both courts below (R. 47-51, 38-42); the District Court for the District of Hawaii in *In re Jocson*, 117 F. Supp. 528; and the District Court for the Eastern District of Virginia, in *Petition of Pringle*, 122 F. Supp. 90, *aff'd sub nom. United States v. Pringle*, 212 F. 2d 878 (C.A. 4). We know of no judicial decision to the contrary.[2]

B. The History and Background of Section 405(a) Clearly Supports the Plain Language of Section 405(a) That the 1940 Act Governs Naturalization Proceedings Where a Declaration of Intention Was Filed Prior to the Effective Date of the 1952 Act.

If anything beyond the plain language of Section 405(a) is necessary to establish that Section 405(a) operates to

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[1] Against this background, the Government's argument (Brief for the United States, pp. 26-28) based upon the elimination, in the 1952 Act, of the requirement for filing a declaration of intention can be given no weight especially since, under the 1940 Act, aliens could initiate naturalization proceedings *only* by filing a declaration of intention, except in a few instances where Congress waived this requirement.

[2] The decisions in *Shomberg v. United States*, No. 48, O.T. 1951, 115 F. Supp. 336, 210 F. 2d 82, are based upon consideration of Section 318, as well as Sections 405(a) and (b) of the 1952 Act; and the First Circuit's decision in *United States v. Cunha*, 209 F. 2d 326, rested upon 405(b) alone—which was sufficient to save the petition there involved—and it was unnecessary to refer to Section 405(a).

make the 1940 Act applicable to the hearing and determination of naturalization proceedings instituted by a declaration of intention filed prior to the effective date of the 1952 Act, the history and background of Section 405(a) clearly does this.

The phrases "status," "condition," and "right in process of acquisition" were not contained in Section 347(a) of the Nationality Act of 1940, 54 Stat. 1168, 8 U.S.C. (1946 ed.) Sec. 747(a), the predecessor savings clause to Section 405(a) of the Immigration and Nationality Act of 1952. These words are new to the 1952 Act. As the Government has rightly noted, "the reason for their inclusion becomes perfectly clear by a reading of the conflicting opinions in *United States ex. rel. Aberasturi* v. *Cain*, 147 F. 2d 449 (C.A. 2) and *Bertoldi* v. *McGrath*, 178 F. 2d 977 (C.A.D.C.)." (Brief for the United States, pp. 24-25.) These two circuit court decisions were in conflict, and this conflict was never taken up to this Court. Instead, the conflict was resolved by the enactment of Section 405(a) of the 1952 Act which—as the Government has indicated—wrote into the new statute the interpretation of the Court of Appeals for the District of Columbia in the *Bertoldi* case and declined to accept the interpretation of the Second Circuit in the *Aberasturi* case.

As the Government has pointed out, these cases dealt with the question, under the Nationality Act of 1940, whether old or new law controlled the derivation of citizenship by a minor, without court decree, through the parents' naturalization. Under the law in effect prior to the Nationality Act of 1940, the minor derived citizenship provided he resided permanently in the United States for five years prior to reaching his twenty-first birthday; under the 1940 Act, the residence requirement of five years had to be completed before the minor reached his eighteenth birthday. In each instance, the minor involved would have automatically qualified for citizenship under the old law but would not have been so qualified if the new law applied.

The Second Circuit took the position that the savings clause in the Nationality Act of 1940 "does not cover a mere condition unattended by any affirmative action." 147 F. 2d at 452. In the *Bertoldi* case, however, the Court of Appeals for the District of Columbia concluded that the old law was controlling because Section 347(a) of the Nationality Act of 1940 expressly provided that "rights partly accrued under the old act should not be disturbed by the new." 178 F. 2d at 978.[3]

As noted, Section 405(a) of the 1952 Act wrote into law the view expressed in *Bertoldi*. In so doing, and by using the words "condition," "status," and "right in process of acquisition," the Congress expressly provided that even where certain inchoate rights, unaccompanied by any affirmative act on the part of an alien, were in the process of ripening into citizenship, nothing contained in the 1952 Act should be construed to affect these rights. It would be clearly illogical to say that a provision which has gone so far as to preserve inchoate rights unaccompanied by affirmative action on the part of an alien does not also preserve rights in the process of accruing which stem from affirmative acts—such as the filing of a declaration of intention.

Thus, the Government has argued only half way. For though it has conceded that the words "condition," "status" and "right in process of acquisition" found their way into Section 405(a) as a result of the *Aberasturi-Bertoldi* conflict so as to insure the preservation of inchoate rights in the process of acquisition at the time the 1952 Act became effective, the Government fails to carry this argument to the necessary conclusion that these words encompass *a fortiori* the situation where the alien has taken the affirmative and positive step of filing a declaration of intention.

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[3] "'Thing, or matter' in this statute cannot be limited to that which is tangible or physical, because if thus limited, the words would have no meaning here." 178 F. 2d at 979.

The decided cases indicate that Respondent's situation would have come within the parent savings clause, Section 347(a) of the Nationality Act of 1940, even before the specific reference to "status, condition, right in process of acquisition" was added. Section 347(a) had been characterized by the courts as being "about as broad as language could be," *Bertoldi* v. *McGrath*, *supra*, at 978, and "the broadest possible language," *United States ex rel. Aberasturi* v. *Cain*, *supra*, at 452 (dissenting opinion); and it was well recognized that its purpose was to insure that "*naturalization matters or proceedings* awaiting disposition at the time of the effective date of the statute," were not to be disturbed or affected by changes contained in it. *In re Shaver*, 140 F. 2d 180, 182 (C.A. 7) (emphasis added). See also *Petition of Zigalnitsky*, *supra*.[4]

And Section 347(a) has not only been held applicable to "naturalization proceedings" but also to instances where declarations of intention had been filed. Thus, in *In re Urmeneta*, 42 F. Supp. 138, the question presented was whether an alien who withdrew his declaration of intention, and thereby avoided military service, was to be forever barred from citizenship under the Act of July 9, 1918, 40 Stat. 885, 8 U.S.C. Sec. 366, so specifying, and which was in effect at the time of the withdrawal, notwithstanding the repeal of this ban by the Nationality Act of 1940. The District Court for the Eastern District of Wisconsin held that the petitioner's "act" of withdrawing his declaration "existed" at the time the 1940 Act went into effect, within the meaning of Section 347(a), and that, therefore, his position with respect to naturalization was to be determined under the 1918 Act. But *cf. Petition of Otness*, 49

[4] See also Report of the Joint Departmental Committee, published by the House Committee on Immigration and Naturalization, 75th Congress, 3rd Session, commenting on the provisions of the 1940 Act which ultimately became Section 347 (a) and (b), set out at p. 12, *infra*, to the effect that these sections contain "the customary clauses by which the status quo is maintained in relation to *naturalization proceedings* and other related matters pending at the time . . ." (Emphasis added.)

F. Supp. 220 (N.D. Cal.). It would appear that if Section 347(a) could be interpreted as preserving old law with regard to the *withdrawal* of a declaration, it should also operate to preserve the applicability of prior law with respect to the proceedings initiated by the *filing* of the declaration.

In *Petition of Zigalnitsky, supra*, the question presented was whether Section 347(a) required that the period of limitation for filing a naturalization petition be determined under the law in effect when the declaration of intention was filed, or within the time provided by the 1940 Act. The United States District Court for the Southern District of New York held that Section 347(a) required that the earlier law govern; and in so holding implicitly decided that Section 347(a) preserved old law for aliens who had filed declarations of intention prior to the effective date of the Nationality Act of 1940.

Thus, the parent provision of 405(a) of the 1952 Act—Section 347(a) of the 1940 Act—was considered by the courts as being applicable to naturalization proceedings and as saving old law for those naturalization proceedings instituted prior to that Act's effective date. Furthermore, this provision was also considered by the courts as covering naturalization cases where merely a declaration of intention had been filed prior to the effective date of the 1940 Act. Certainly, Section 405(a) of the 1952 Act, which uses all the words of the 1940 provision (and more), must embrace all situations of the kind covered by its predecessor provision. And by adding the words "condition, status, right in process of acquisition," Congress has manifested an intention to enlarge the scope of 405(a) over its parent. We conclude, therefore, that the history and background of Section 405(a) supports and reinforces the Section's plain language; and requires the application of prior law to a naturalization proceeding commenced prior to the effective date of the 1952 Act by the filing of a declaration of intention.

II. SECTION 405(b) DOES NOT PRECLUDE OR PROHIBIT THE APPLICATION OF THE PROVISIONS OF THE 1940 ACT TO NATURALIZATION PROCEEDINGS INITIATED BY A DECLARATION OF INTENTION FILED PRIOR TO THE EFFECTIVE DATE OF THE 1952 ACT.

Petitioner reads Section 405(b) of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U.S.C.A. Sec. 1101, footnote, as requiring the application of the 1940 Act to all naturalization proceedings in which a naturalization petition was filed prior to the effective date of the 1952 Act, *and as prohibiting the application of the 1940 Act to all other naturalization proceedings*. This is a palpably erroneous reading of Section 405(b). Section 405(b) prohibits nothing: its language is cast in affirmative rather than negative terms. It refers only to naturalization petitions filed prior to the effective date of the 1952 Act and provides that the old law shall apply to them. It makes no reference to declarations of intention, nor does it specify how subsequently filed petitions are to be treated where such petitions represented the perfection or consummation of proceedings instituted prior to the effective date of the Act.

The Government seeks to read a prohibition into Section 405(b), apparently on the assumption that because it expressly provides for one instance, it impliedly prohibits all other instances. In so arguing, the Government treats Section 405(b) as if it read:

> "(b) Except as otherwise specifically provided in Title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed, *and all other petitions for naturalization shall be heard and determined under the provisions of this Act.*"

But the italicized language does *not* appear in Section 405(b)!

If Section 405(b) stood alone, and was not immediately preceded by Section 405(a), there might be some substance to the Government's position. But Section 405(b) is

obviously a form of supplement to Section 405(a) and cannot, therefore, be read in isolation. When the Government urged its construction of 405(b) in *Petition of Pringle*, *supra*, the United States District Court for the Eastern District of Virginia stated unequivocally:

> "Although subsection (b) of the savings clauses, supra, does affirmatively declare that the 1940 Act shall govern pending petitions, its implication is not strong enough to negative the equally plain intent of subsection (a)—that other and earlier steps towards naturalization should also preserve and project the provisions of the 1940 Act." (122 F. Supp. at 92)

The Court of Appeals for the Fourth Circuit affirmed this decision, expressly indicating approval of the District Court's reasoning. *United States* v. *Pringle*, 212 F. 2d 878.

Nor can Section 405(b) be interpreted as creating an exception, in the case of naturalization proceedings, to Section 405(a) under the "unless as otherwise specifically provided therein" clause of the latter. Section 405(a) contemplates that for an individual to lose a benefit or advantage acquired under earlier law, it is necessary to find a *specific* provision removing the situation from the scope of Section 405(a). It is clear that Congress did not desire that Section 405(a) be negatived by implication, but only by specific statutory language. The analogous phrase of Section 347(a) of the 1940 Act was "unless otherwise provided," and Congress in carrying the phrase over to Section 405(a) of the new Act deliberately inserted the word "specifically."

Section 405(b) does not *specifically* provide for an exception to Section 405(a) with respect to the law governing naturalization proceedings resulting from a declaration of intention filed prior to the Act's effective date. Although Congress must have had Section 405(a) in mind when it drafted Section 405(b), it did not include in Section 405(b) language *specifically* indicating that Section 405(b), rather than Section 405(a), should be controlling

with respect to naturalization proceedings. In sharp contrast, when Congress wished to make a specific exception or qualification in a subsection "b" to the provisions of a subsection "a", it did so clearly and precisely and left nothing to implication. Cf. Sec. 327 (a) and (b), 66 Stat. 248, 8 U.S.C. Sections 1438(a) and (b). See also Sections 328(b)(2) and 336(c), 66 Stat. 249 and 66 Stat. 257, 8 U.S.C. Sections 1439(b)(2) and 1447(c); 329(b)(5) and 336(c), 66 Stat. 250 and 66 Stat. 257, 8 U.S.C. Sections 1440(b)(5) and 1447(c).

If Sections 405(a) and 405(b) are read in the light of the plain meaning of their language, there is no inconsistency or lack of harmony between them, and full force and effect can be given to the language of each. Section 405(a) obviously applies to each and every situation, including naturalization proceedings, in which benefits or disadvantages have attached under earlier law. Section 405(b) merely specifies certain circumstances under which the provisions of the 1952 Act, rather than prior law, may apply with respect to the hearing and determination of naturalization petitions. The fact of the matter is that insofar as the language of Section 405(b) refers to consideration of naturalization petitions under prior law, this language does not, and there is no indication that it was ever intended to, add to or detract from the basic provisions of Section 405(a).

If a problem of reconciling Sections 405(a) and 405(b) exists as the Government seems to suggest, that problem must have existed equally under the Nationality Act of 1940, since Sections 347(a) and 347(b) of that Act were in essential respects identical to the present provisions. Section 347(a) contained sweeping, all-inclusive language (similar to 405(a)) preserving the effect of prior law, and Section 347(b) provided that:

> "Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years

> thereafter in accordance with the requirements of law in effect when such petition was filed."

If Section 405(b) is to be read as providing an exclusive savings clause for naturalization proceedings, Section 347(b) should have been similarly interpreted. It is apparent, however, that Section 347(b) has never been, and could not have been so interpreted in the light of its origin.

Legislative consideration of the Nationality Act of 1940 was initiated by a message to the Congress from the President on June 13, 1948. The President's message transmitted a proposed Nationality Code drafted by a Joint Departmental Committee composed of the Secretary of State, the Attorney General, and the Secretary of Labor.[5] Sections 346(a) and 346(b) of the proposed Code were savings clauses identical in all essential respects to Sections 347(a) and 347(b) as finally enacted in the Nationality Act of 1940. The Joint Departmental Committee, at page 63, commented on these clauses as follows:

> "Proposed Section 346 contains the customary clauses by which the status quo is maintained in relation to naturalization proceedings and other related matters pending at the time the proposed cost (sic) becomes effective.
>
> "Under proposed subsection (b) a period of 2 years would be granted during which any petition for naturalization filed prior to enactment of the new measure might be heard under the law in effect when the proceeding was begun. This period of time is not unreasonable in view of the fact that in many naturalization courts but few naturalization hearings are held, as frequently as once a year in some localities."

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[5] The President's message, and the proposed Nationality Code were published by the House Committee on Immigration and Naturalization, 75th Cong., 3rd Session.

It is obvious that the Joint Departmental Committee, the original drafters of the savings clause, regarded subsection (a) as providing for the applicability of prior law and subsection (b) as merely imposing a two-year limitation in the case of naturalization proceedings. The Committee would certainly have made more specific comments about subsection (b) had it intended that subsection to operate, separate and apart from subsection (a), as the basic savings clause with respect to naturalization proceedings.

It is obvious also that the courts consistently regarded Section 347(a), and not Section 347(b), as the basic provision for ascertaining whether the substantive provisions of the 1940 Act or of prior law were controlling with respect to naturalization petitions or declarations of intention pending when the 1940 Act became effective. *In re Shaver*, 140 F. 2d 180; *In re Urmeneta*, 42 F. Supp. 138; *Petition of Otness*, 49 F. Supp. 220; *In re McInnis*, 50 F. Supp. 303 (D. Mass.); *Petition of Hirsch*, 50 F. Supp. 638 (D. Pa.); *Petition of LaBella*, 52 F. Supp. 980 (D. Conn.), and *Petition of Zigalnitsky, supra*. In none of these cases did the court look to Section 405(b) as the controlling provision with respect to naturalization proceedings, but in all of them Section 405(b) appears to have been regarded simply as imposing a two-year limitation upon the provisions of Section 405(a) relating to naturalization petitions. Thus, in *In re McInnis*, the court stated:

> ". . . Section 347(a) kept alive the petition in the present case, but only to the extent allowed by the provisions of Section 347(b) . . ." 50 F. Supp. at 304.

And in *Petition of LaBella*, the court stated:

> "Section 347(a) saves existing petitions and proceedings from destruction upon the taking effect of the Act. . . . Section 347(b), however, limits the effect of this saving clause insofar as petitions are concerned by requiring pending petitions to be heard and

> determined within two years after the act shall take effect in accordance with the requirements of law in effect when such petition was filed." 52 F. Supp. at 981.

When Congress concluded, in drafting the 1952 Act, that the two-year limitation should be dispensed with, there was no reason for retaining any part of Section 347(b). The Congress wished to make some exceptions to the savings clause in certain types of naturalization proceedings, and obviously chose to preserve the pre-existing Section 347(b), stripped of the two-year limitation provision, as a vehicle for these new limitations. Section 347(a) was, therefore, carried over to the new Act as Section 405(a) in broad and all-inclusive form, and the revised Section 347(b) was carried over as Section 405(b). The language of Section 405(b) relating to the hearing and determination of naturalization petitions in accordance with prior law is of no greater significance than the identical language was in Section 347(b) of the 1940 Act.

Any other interpretation of Sections 405(a) and 405(b) results in creation of an inconsistency between these provisions and the necessity for giving considerable less than full force and effect to Section 405(a), which, of course, is contrary to the plain meaning and scheme of the statute. Three District Courts and two Courts of Appeal have considered the precise problem of statutory interpretation involved in the present case and have had no difficulty in reading the language of Section 405(a) and Section 405(b) in a manner which gives full effect to the plain meaning of the words used. *Petition of Menasche*, 115 F. Supp. 434, *aff'd. sub nom. United States* v. *Menasche*, 210 F. 2d 809; *Petition of Pringle*, 122 F. Supp 90, *aff'd. sub nom. United States* v. *Pringle*, 212 F. 2d 878; *In re Jacson*, 117 F. Supp. 528. We think that the only confusion that exists with regard to these provisions stems from the Government's proffered construction of them.

III. THE CONSTRUCTION OF SECTIONS 405(a) AND 405(b) ADOPTED BY THE COURTS BELOW DOES NOT HAVE THE EFFECT OF NEGATING OR NULLIFYING OTHER PROVISIONS OF THE ACT, NOR OF PERPETRATING INEQUITIES.

The Government argues (Brief for the United States, pp. 31-34) that if Section 405(a) is interpreted as extending the provisions of the Nationality Act of 1940 to naturalization proceedings initiated by a declaration of intention filed prior to the effective date of the 1952 Act, important provisions of the 1952 Act will be virtually nullified and serious inequities will result, and that Congress surely did not intend that the Act be interpreted in a manner which would produce this result.

A. Section 405(b) is prefaced by the clause "except as otherwise specifically provided in Title III. . . ." Sections 311, 313(a), 315(a), 318, and 331(d) of Title III of the Act all contain the phrase "notwithstanding section 405(b)" or "notwithstanding the provisions of section 405(b)," and therefore constitute exceptions to Section 405(b). The Government argues that these provisions manifest the Congress' intention to make these sections of Title III applicable to the hearing and determination of naturalization petitions whenever they may have been filed, and thus to remove naturalization proceedings from the scope of the savings clause insofar as concerns the applicability of these provisions; and therefore, that if Section 405(a) is regarded as controlling with respect to situations in which declarations of intention were filed prior to the effective date of the 1952 Act, these excepting provisions will be virtually nullified.

The fact is, however, that neither the construction urged by Respondent, nor the decisions of the courts below can nullify, or have nullified, any of these provisions of Title III.

How the provisions of Title III are affected is a question involved in *Shomberg* v. *United States*, No. 48, O.T. 1954, which is now before this Court on writ of certiorari. Shomberg filed his naturalization petition prior to the effective date of the 1952 Act, and argued that

Section 405(a) required that the petition be determined under the provisions of the 1940 Act. The Government contends, however, that Shomberg did not meet the requirements of Section 318 of the 1952 Act in that deportation proceedings were pending, and that the requirements of Section 318 were made expressly applicable "notwithstanding the provisions of Section 405(b)." The Court of Appeals for the Second Circuit stated in its decision that if Section 405(a) were to be read as overriding Section 318, Section 318 and the other similar provisions of Title III would be nullified. The Government makes the same argument in this case, but the argument does not apply here.

The only question presented in the instant case is whether Section 405(a) preserves the applicability of prior law where a declaration of intention was filed prior to the effective date of the 1952 Act; and Sections 311, 313(a), 315(a), 318, and 331(d) are not—in even the remotest fashion—involved. Respondent's position is not necessarily inconsistent with the position of the Court of Appeals for the Second Circuit in the *Shomberg* case. Even if Section 318 of the 1952 Act, and the other four sections of Title III are applicable—because of the "notwithstanding the provisions of Section 405(b)" clause—to situations in which naturalization petitions were filed prior to the effective date of the Act, the plain language of Section 405(a) would still apply to the case of Respondent. Section 405(b), and the five specific sections of Title III which are exceptions to it, would, at the most, operate only to remove naturalization proceedings from the embrace of Section 405(a) to the extent necessary to make the five provisions of Title III applicable in lieu of prior law.

Certainly, it is not a necessary consequence of the decisions of the courts below that Sections 311, 313(a), 315(a), 318, and 331(d) are nullified or "rendered meaningless" (Brief for the United States, p. 31). The effect on these sections should be considered in the *Shomberg* case and not in this one.

B. The Government also argues that interpreting Section 405(a) so as to make the benefits of prior law available to individuals who filed declarations of intention prior to the effective date of the 1952 Act, would place such individuals in a more advantageous position than a group of aliens, including veterans and spouses of citizens, who under the 1940 Act were singled out for favored treatment by being exempted from the necessity for filing declarations of intention.

As an example, the Government points out (Brief for the United States, pp. 32-33) that under the Nationality Act of 1940 the alien spouse of a United States citizen could file a petition for naturalization after one year of residence, Sec. 310(a), 54 Stat. 1144, 8 U.S.C. (1946 ed.) Sec. 710(a); but that under the equivalent provision of the Immigration and Nationality Act of 1952, three years of residence is required, Sec. 319, 66 Stat. 244, 8 U.S.C. Sec. 1430. The Government therefore argues that an alien spouse of a citizen who had just less than one year's residence on the effective date of the 1952 Act, would be required to meet the longer residence requirement of the new law, rather than the shorter period of the old. The Government further points out that alien spouses of citizens were not required, under the 1940 Act, to file declarations of intention; and thus, the Government contends, alien spouses who did not file declarations could not have the benefit of the savings provisions in Section 405(a).

Of course, nothing in the 1940 Act precluded such alien spouses from initiating naturalization proceedings by filing a declaration of intention rather than relying upon the filing of the petition itself.[9] Nevertheless, the Government finds in this difference an "inequity" unintended by the Congress.

[9] Section 310(a) of the Nationality Act of 1940, 54 Stat. 1144, 8 U.S.C. (1946 ed.) Sec. 710(a), provided only that "No declaration of intention *shall be required*" to commence naturalization proceedings for such spouses, but this provision did not preclude a spouse from filing a declaration if he wished to do so. See *Brief for the United States*, p. 27.

In making this argument, the Government overlooks the fact that alien spouses of citizens may have acquired a "status" or a "condition" within the meaning of Section 405(a), so that the provisions of the 1940 Act favoring them, would remain applicable. Quite possibly, loss of the benefit afforded these aliens under the 1940 Act was among the "unforeseen effects upon pre-existing statuses and conditions" which Congress sought to avoid in enacting Section 405(a). *Cf. Ex parte Robles-Rubio*, 119 F. Supp. 610, 613-14 (N.D. Cal.).

However that may be, if such inequities do exist, they are not the consequence of Respondent's position before this Court, nor of the construction of the law adopted by the courts below. Rather they arise from the enactment of the Immigration and Nationality Act of 1952 in a form which makes more stringent the prerequisites for citizenship. After all, it was the Congress which increased the resident requirement for alien spouses of citizens to three years in the 1952 Act, from one year in the 1940 Act. But, as the Government points out (Brief for the United States, pp. 35-36), the wisdom of the legislation is the concern of the Congress, not of the courts; and if there is an "inequity", it was created by the Congress when it enacted the Immigration and Nationality Act of 1952.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below should be affirmed.

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